IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.173 OF 1997
IN
WRIT PETITION NO.2244 OF 1997

Oil & Natural Gas Commission
having its office at 2/4,
Vasudhara Bhavan, Bandra (E),
Bombay 400 051. .. Appellant
(Orig.Respondent
No.1)

v/s.

1. The Petroleum Employees Union,
being a registered trade union,
having its office at Tel.Rasayan
Bhavan, Tilak Road, Dadar (E),
Bombay 400 014.

2. General Employees Association
being a registered trade union,
having its office at Tel.Rasayan
Tilak Road, Dadar (E),
Bombay 400 014.

3. Union of India (through the
Secretary, Government of India,
Ministry of Labour, New Delhi.

4. The Secretary,
Central Advisory Contract Labour
Board, New Delhi (Notice to be
served on Central Government
Advocate, Ministry of Law &
Legal Affairs, Ayakar Bhavan,
Bombay 400 020.

5. Regional Labour Commissioner (C)
Wakefiled House, Ballard Estate,
Bombay 400 038.

6. Annu Sales Corporation
C/o.O.N.G.C.Vasudhara Bhavan,
Bandra (E), Bombay 400 051.

7. Asha Caters
C/o.V.T.Shetty
O.N.G.C.Canteen, Vasudhara
Bhavan, Bandra,
Bombay 400 051.

8. Bharat Travereary
C/o.O.N.G.C.
Uran, Dist.Raigad.

9. Bhavsar Construction

C/o.O.N.G.C., Vasudhara
Bhavan, Bandra,
Bombay 400 051.

10.Bombay Offshore Services
C/o.O.N.G.C., Vasudhara
Bhavan, Bandra,
Bombay 400 051.

11.Classic Engineers
C/o.O.N.G.C., Vasudhara
Bhavan, Bandra,
Bombay 400 051.

12.Daanish Sales Corporation
C/o.O.N.G.C., Halibase,
Vile Parle (W), Bombay.

13.Decora
C/o.O.N.G.C.,
Maker Towers, Colaba,
Bombay 400 005.

14.Denash Sales Corporation
C/o.O.N.G.C., Vasudhara
Bhavan, Bandra,
Bombay 400 051.

15.Entra Enterprises
C/o.O.N.G.C.,
Maker Towers, Colaba,
Bombay 400 005.

16.GEM Electric
C/o.O.N.G.C.,
Maker Towers, Colaba,
Bombay 400 005.

17.ISGS
Basement 192, Gautam Terrace,
M.G.Road, Thane 400 605.

18.Jay Traders
C/o.O.N.G.C.
Botawala Chambers,
Sir P.M.Road, Bombay.

19.Kumar Agencies
Botawala Building
Sir P.M.Road, Bombay.

20.K.D.Brilal
C/o.O.N.G.C.,
Darukhana, Bombay.

21.Multi Service Agency
C/o.O.N.G.C., Halibase,

Maker Towers, Colaba,
Bombay 400 005.

22.Nath Enterprises
C/o.O.N.G.C.,
Vasudhara Bhavan, Bandra (E),
Bombay.

23.Nath Xerox
C/o.O.N.G.C.,
Bandra (E),
Bombay 400 051.

24.O.N.G.C.
Halibase, Vile Parle (W)
Bombay.

25.Pioneer Data Control
C/o.O.N.G.C.
Bandra (E), Bombay 400 051,

26.Pointer Enterprises
C/o.O.N.G.C.
Arcadia, Nariman Point,
Bombay.

27.Pioneer Electricals
55/2550, Gandhi Nagar,
Bandra (E),
Bombay 400 051.

28.P.M.Consultancy
C/o.O.N.G.C., Vasudhara
Bhavan, Bandra,
Bombay.

29.R.D.Enterprises
C/o.O.N.G.C., Vasudhara
Bhavan, Bandra (E),
Bombay.

30.Sharan Khanna
C/o.O.N.G.C.,
Maker Towers, Colaba,
Bombay - 400 005.

31.S.S.Soman
C/o.O.N.G.C.,
Halibase, Vile Parle (W)
Bombay.

32.Surpabha Industries
C/o.O.N.G.C., Nhava,
Panvel Taluka,
Dist. Raigad.

33.S.R.Construction
C/o.O.N.G.C.,
Uran, Dist. Raigad.

34.S.R.Traders
C/o.O.N.G.C.,
Uran, Dist. Raigad.

35.Tarun Enterprises
C/o.O.N.G.C.,
RCF Priadarshini,
Chembur, Bombay 400 022.

36.Task Force
C/o.O.N.G.C.
Arcadia, Nariman Point,
Bombay.

37.Unique Builders
C/o.O.N.G.C.,
Vasudhara Bhavan,
Bandra (E), Bombay.

38.Vijay Electricals
C/o.O.N.G.C.,
Vasudhara Bhavan,
Bandra (E), Bombay.

39.Sam Fire Services,
24, Samta Industrial Premises
Cooperative Society Ltd.
Tank Road, Vidyanagari Marg,
Kalina, Bombay 400 098.

40.Comtech I.P. (E)
C/o.O.N.G.C.,
Vasudhara Bhavan, Bandra (E),
Bombay.

41.ECS Services
Priyadarshini,
C/o.O.N.G.C.,
Chember, Bombay 400 022.

42.PEST MORTEM (I)
C/o.O.N.G.C.,
Priyadarshini,
Chember, Bombay 400 022.

43.Modrn Past
C/o.O.N.G.C.
Mahakali Caves, Andheri (E),
Bombay.

44.S.S.Constructions
C/o.O.N.G.C.
Mahakali Caves, Andheri (E),
Bombay.

45.Bombay Intelligence Security (I)
Pvt.Ltd.
Garodia Lane, Behind Shreyas
Cinema, Ghatkopar (W),

Bombay 400 086.

46.Asmita Enterprises
Priyadarshini,
C/o.O.N.G.C.,
Chember, Bombay 400 022.

47.M/s.Blue Star Ltd.
G-2, Salimar Ind.Estate,
Matunga, Bombay 400 019.

48.Konkan Electrical &
Mechanical Contractors,
C6/1/311, Sector 6, CBD,
New Bombay 400 614.

49.Danish Sales Corporation
247, Dharavi Road,
Bombay 400 017.

50.Beeyem Electronics,
Samrat Silk Mills Compound,
L.B.S.Marg, Vikhroli (W),
Bombay 400 079.

51.Sagar Fire Protection
Sector 17, Mangal Apartment,
4th Floor, Vashi,
New Bombay.

52.B.R.Construction
Bhigari, ONGC, Phase I,
Panvel, Raigad.

53.Sunil Construction
Sagar Laxmi Enterprises,
2nd floor, Panvel,
Dist. Raigad.

54.S.T.Plant .. Respondents
O.N.G.C. Colony,
Panvel, Dist.Raigad.

Mr.J.P.Cama, senior counsel with Mr.S.A.Bhalwal i/by M/s.Vyas & Bhalwal for the appellant.

Mr.S.S.Pakale, advocate for the respondent Nos.1 and 2.

Mr.Y.R.Mishra with Mr.Y.S.Bhate, advocates for the respondent No.3.

CORAM : R.M.LODHA AND
D.G.KARNIK, JJ.

DATED : 19th November, 2005

ORAL JUDGEMNT (Per R.M.Lodha, J.)

The respondent Nos.1 and 2 hereinafter to be referred to as the petitioners filed the writ petition before this court praying therein that the workers listed in Exhibit "A" be declared to be treated as direct and regular employees of the present appellant hereinafter to be referred as respondent No.1. The petitioners also prayed that the respondent No.1 be directed to absorb these workers with effect from their actual date of entering into the service. The aforesaid prayers were founded on the ground that by the notification dated 9th December, 1976 issued by the Central Government under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 the employment of contract labour for sweeping, cleaning, dusting and watching of buildings has been prohibited. It appears that during the pendency of the writ petition by further notification dated 8th September, 1994, the Central Government prohibited the employment of contract labour in respect of other occupations as mentioned in the said notification and, therefore, absorption and regularisation of those workers covered by the notification dated 8th September, 1994 was also sought.

2. In the light of the decision of the Supreme Court in the case of Air India Statutory Corporation v. United Labour Union and ors., AIR

1997 SC 645, the said decision being squarely applicable, the learned Single Judge allowed the writ petition by the judgment dated 8th January, 1997, thus:

> "In the result, the petition succeeds. The respondent No.1 Corporation is directed to absorb the contract workmen mentioned in Charts "A" and "B" with effect from the respective dates of their entering into service. So far as the workmen listed in Chart "C" are concerned, they shall be liable to be absorbed from the date of the notification dated 8th September, 1994. Needless to mention that the concerned workmen will be entitled to difference of wages and other incidental benefits from the respective date of their absorption. The respondent No.1 Corporation is directed to implement the directions of this court within two months from today.
> No order as to costs."

3. The judgment delivered by the learned Single Judge on 8th January, 1997 is under challenge in this appeal.

4. The Constitution Bench of the Supreme Court in the case of Steel Authority of India Ltd. and ors. v. National Union Water Front Workers and ors., AIR 2001 SC 3527 has overruled the judgment in the case of Air India Statutory Corporation (cited supra).

5. In paragraph 122 of the report, the Constitution Bench in the case of Steel Authority of India Ltd. recorded its conclusions thus-

> "122. The upshot of the above discussion is outlined thus:

(1)(a) Before January 28, 1986, the determination of the question whether Central Government or the State Government, is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry; or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government.

(b) After the said date in view of the new definition of that expression, the answer, to the question referred to above, has to be found in Cl.(a) of S.2 of the Industrial Disputes Act; if (i) the concerned Central Government company/undertaking or any undertaking is included therein eo nomin, or (ii) any industry is carried on (a) by or under the authority of the Central Government or, (b) by railway company; or (c) by specified controlled industry, then the Central Government will be the appropriate Government otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated; will be the appropriate Government.

2(a) A Notification under S.10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government:

(1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and

(2) having regard to

(i) conditions of work and benefits provided for the contract labour in the establishment in question; and

(ii) other relevant factors including those mentioned in sub-section (2) of S.10

(b) inasmuch as the impugned notification issued by the Central Government on December 9, 1976 does not satisfy the aforesaid requirements of S.10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passes or no action taken giving effect to the said Notification on or before the date of this judgment, shall be called in question in any Tribunal or Court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither S.10 of the CLRA Act nor any other provision n the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under sub-section (1) of S.10 prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment.

(4) We overrule the judgment of this Court in Air India's case (supra) prospectively and declare that any direction issued by any industrial adjudicator/any Court including High Court, for absorption of contract labour following the judgment in Air India's case (supra), shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under S.10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaking to produce any given result for the establishment or for supply of contract labour for work of the establishment under

a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment subject to conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under S.10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

6. Though the learned Single Judge based his decision on the judgment of the Supreme Court in the case of Air India Statutory Corporation but the legal position as it stands now is that the judgment in Air India Statutory Corporation has been specifically overruled and the notification under section 10(1) of the CLRA Act issued on 9th December, 1976 quashed. In this legal backdrop, the judgment of the learned Single Judge cannot be sustained and has to be set aside.

7. The learned counsel for the petitioners, however, put forth his submission that during the pendency of the appeal, the contract workers represented by the petitioners have been absorbed by the respondent No.1. According to him, such absorption holds good since the direction given in the impugned judgment has been given effect to and such action has become final. The learned counsel for the respondent Nos.1 and 2 would submit that if this submission of his is not accepted, then the appropriate Government be directed to refer the industrial dispute to the Industrial Tribunal having jurisdiction in the matter and until the reference is made and the application for interim relief is considered by the concerned Industrial Court, the employment of these workers be protected.

8. The Supreme Court in the case of Steel Authority of India clarified that Air India Statutory Corporation is overruled prospectively and that direction or order, if implemented and having attained finality shall not be set aside, altered or modified. The question before us is whether the implementation of the judgment by the present appellant in absorbing the concerned employees during the pendency of appeal can be said to have attained finality. Our answer is in the negative. The fact that the appeal against the judgment of the learned Single Judge is pending,

any action of absorption by the appellant during the pendency of appeal pursuant to the judgment of the learned Single Judge, by no stretch of imagination, can be said to have attained finality as the very correctness of the judgment of the learned Single Judge in directing the absorption of the concerned employees is in issue in appeal and is surely subject to the decision in the appeal. We, thus, hold that the absorption of the concerned contract workers during the pendency of the appeal had not attained finality at any point of time much less before the judgment of the Supreme Court in the case of Steel Authority of India Ltd.

9. The judgment of the learned Single Judge has to be set aside in the light of the authoritative pronouncement of the Supreme Court in the case of Steel Authority of India Ltd. However, the operation of the order deserves to be stayed for some time to enable the petitioners either to carry the matter to the Supreme Court or apply to the appropriate Government for making reference of the industrial dispute said to have arisen between the parties for adjudication.

10. Resultantly, we allow the appeal and set aside the judgment dated 8th January, 1997 impugned in the present appeal. We stay the operation of our judgment for a period of four months. We also observe that in case the petitioners apply to the

appropriate Government (Central Government -respondent No.3) for making reference of the industrial dispute to the industrial tribunal, the Central Government shall take decision thereon as expeditiously as possible and in no case later than six weeks from the date of receipt of the application and communicate the same to the petitioners.

No costs.

(R.M.LODHA, J.)

(D.G. KARNIK, J.)